IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1255 (S/B) of 2002

Kunwar Bahadur Lal Srivastava
S/o Sri Lal Bahadur Srivastava,
R/o Great Mission School Campus,
Bharat Puri Ram Nagar,
Distt. Nainital …….Petitioner

Versus

Joint Director of Education,
Kumaon Mandal, Nainital
And others ……...Opposite Party.

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Coram: Hon. P.C. Verma, A.C. J.
Hon. Irshad Hussain, J.
Date: December 22, 2003.

[Per Hon. P.C. Verma, A.C. J.]

After hearing learned counsel for the parties, we have dismissed the writ petition on 06.12.2003 for the reason to follow. Now we are recording our reasons.

We have heard Mr. Sharad Sharma, learned counsel for the petitioner, Mr. Manoj Tiwari, learned counsel for the respondent no. 3 and learned counsel for the State.

The petitioner is aggrieved by the order dated 27.08.2002 passed by the respondent no. 4 alleged to have been passed in adherence to the order passed by the respondent no. 1 dated 14.08.2002, thereby transferring the respondent no. 3 on the post of Principal M.P. Hindu Inter College, Ram Nagar, Nainital depriving his right to continue on the post of ad hoc Principal on which he was discharging his duties after being appointed w.e.f. 30.06.2000.

The petitioner was initially appointed as a Lecturer on 24.08.1971. Owing to the petitioner's long span of service in the Institution, the respondents prepared the final seniority list of the Lecturer and the name of the petitioner finds place at the top. A vacancy of the post of Principal occurred in the said college. On occurrence of that vacancy, one Mr. M.S. Mittal, who was then working as senior most lecturer was appointed as Principal on ad-hoc

basis in June, 1992. according to the petitioner, the appointment of Mr. M.S. Mittal was made strictly in compliance with provisions of U.P. Secondary Education (Service Selection Board) Act, 1982 (hereinafter referred to as the Act) and after notifying the same to the Commission. As the regular recruitment was not possible during the relevant period, therefore, right from 30.6.1992, Mr. M.S. Mittal, who was discharging his service after his name being recommended by the Committee of Management, was termed as ad hoc Principal. After superannuation of Mr. M.S. Mittal, the post of Principal fell vacant once again. The committee of Management passed a resolution on 30.4.2001, whereby the petitioner was appointed as an officiating principal against the said post vide order dated 27.6.2000. Since then, the petitioner is discharging his duties in the institution. After the petitioner's joining in the Institution, he was promoted as ad hoc Principal vide order of the Manager dated 16.12.2000, copy of which was sent to District Inspector of Schools, Nainital, who also accorded approval to the same on 02.12.2000. According to the petitioner, since he was working satisfactorily, therefore, there was no occasion for any of the respondents to appoint some other incumbent on the post of Principal. On 27.8.2002 the respondent no.4 passed an order transferring the respondent no. 3 in place of the petitioner without assigning any reason. On 11.9.2202 the petitioner sent his representation to the Joint Director of Education, on which no orders were passed. Hence, this writ petition has been filed.

Learned counsel for the State strongly opposed the relief sought for by the petitioner. He has drawn our attention to the counter affidavit filed by the State. It is clearly stated in the counter affidavit that the petitioner was given ad hoc promotion consequent upon the retirement of Mr. M.S. Mittal, Principal of M.P. Hindu Inter college Ramnagar, and this ad hoc promotion was subject to the regular appointment on the post of Principal as per the provision of the Act of 1982. It is further submitted in the counter affidavit that the petitioner served as ad hoc Principal till the respondent no. 3 was appointed on regular basis as Principal. The respondent no. 3 was

appointed on regular basis as Principal. When the respondent no. 3 was appointed as Principal, the petitioner handed over the charge to the new incumbent on 27.8.2002. The true copy of the holding over certificate has been annexed as Annexure no. C.A. 2 to the counter affidavit filed by the State.

The Respondent no. 3 has also filed counter affidavit separately stating therein that the writ petition is totally misconceived and devoid of merit. The petitioner has no cause of action for invoking the extra ordinary jurisdiction of this Court as he was appointed as Principal of Inter College after regular selection by the U.P. Secondary Education Service Selection Board in accordance with provision of the Act and Rules framed there under. The petitioner, who was holding officiating charge of Principal in stop gap arrangement since 30.6.2000, cannot claim any right to continue as Principal forever. The petitioner was given officiating charge of Principal till the joining of the regular incumbent on the post of Principal.

The petitioner has also filed rejoinder affidavit, but he has not been able to successfully rebut the facts stated in the counter affidavits of the State and respondent no. 3.

It is established from the facts noted above that the petitioner was holding the office of Principal on ad hoc basis till the joining of regular selected Principal by the Board under the Act. Since the respondent no.3 was appointed as Principal after regular selection by the U.P. Secondary Education Service Selection Board, therefore, he was rightly given charge of the Principal of the Institution. The petitioner has himself handed over charge of the Institution on 27.8.2002 copy of which is Annexure C.A. 2 to the counter affidavit of the State. Therefore, he cannot raise any grievance on this score as he was only given chance to officiate till regularly selected candidate is available.

In view of the above, the writ petition lacks merit.

The petition is dismissed. No order as to costs.

(Irshad Hussain, J.) **(P.C. Verma, A.C. J.)**

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